

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: November 20, 2002
TIME: 9:30 am
PLACE: State Office Bldg. #2
3rd Floor Conference Room
54 South High Street
Wailuku, HI 96793

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 9:45 a.m.

Chair Coloma-Agaran announced that a letter from Commissioner Ching recusing herself from the Iao matter was received. He also announced that the Commission would take a break at 11:30 am. At 12:30 pm the Commission will be in Executive Session and the meeting will start at 1:00 pm.

The following were in attendance:

MEMBERS: Mr. Gilbert S. Coloma-Agaran, Dr. Bruce Anderson, Mr. Clayton Dela Cruz, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

STAFF: Linnel Nishioka, Roy Hardy, Glenn Bauer, Charley Ice, Kevin Gooding

EXCUSED: Ms. Meredith Ching

COUNSEL: Yvonne Izu

OTHERS: Sally Raisbeck, Megan Wells, John Varel, William Meyer, Sean Lester, Warren Watanabe, George Tengan, Glenn Shepherd, Bob Parsons, Jonathan Starr, Avery Chumbly, Gary Zakian, Kapua Sproat, Jim Williamson, Marcia Godinez, Christina Hemming, Luciene DeNaie, Thelma Shimaoka, Ed Lindsey

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

1. Minutes of the October 16, 2002 meeting

MOTION: (RICHARDS/NISHIDA)
To approve the minutes.
UNANIMOUSLY APPROVED.

2. Old Business/Announcements by Deputy Director Linnel Nishioka

This was Commissioner Anderson's last meeting with the Commission. On behalf of the Commission staff Deputy Director Nishioka thanked Commissioner Anderson for his dedicated service. It was a pleasure working with him.

3. Nu'u Mauka, LLC, REQUEST FOR VARIANCE FROM WELL CONSTRUCTION STANDARDS, INSTALLATION OF NARROW-DIAMETER MONITOR TUBE, Nu'u Mauka Well (Well No. 3810-01), Well Construction: 6-inch Casing Diameter, 250-foot Deep Well, Pump Installation: 28 gpm for Agricultural Use, TMK 1-8-1:1, RT-31, Kaupo, Maui

PRESENTATION OF SUBMITTAL: Charley Ice

RECOMMENDATIONS:

That the Commission deny the variance from the Hawaii Well Construction and Pump Installation Standards (HWCPIS) to install a 3/4-inch monitor tube.

TESTIMONY BY APPLICANT:

Mr. Mike Robertson, of Wailani Drilling first stated that he is an advocate for smaller, lower capacity water wells for the smaller land owners. He tries to provide a reasonably cost product for the small farmer and homeowner who desire to have their own water wells. He demonstrated how the measurements would be done using a 3/4-inch monitor tube. He felt that there would be lots of space clearance. Mr. Robertson stated that the well standards haven't been enforced as strictly as they have been in the last year. He also implied that the standards may need to be revised.

In answer to Commissioner Anderson's question if Mr. Robertson's request is reasonable, Mr. Glenn Bauer stated that the request is reasonable but when water levels need to be measured and the tubing is not straight, the probe will not go down and an accurate measurement cannot be taken. A larger diameter tube would be better for measurement.

Commissioner Anderson deferred to staff's recommendation because this is a very technical issue. He also urged that perhaps these variance issues be dealt with at the staff level being the technicalities involved. He stated that rule amendments to the standards may be necessary to allow for variances of this type of situation to accommodate for smaller wells.

Commissioner Richards commented that there is no rule that takes shallower wells into consideration.

Mr. Bauer stated that the well and pump standards will need to be revised. After working with the standards, staff has realized that there are many additional issues that need to be considered.

MOTION: (ANDERSON/NISHIDA)

To approve the submittal.

UNANIMOUSLY APPROVED.

4. Application for an After-the-Fact Stream Channel Alteration Permit, Stream Diversion Works Permit and Petition to Amend the Interim Instream Flow Standard (SCAP-MA-352), Temporary Stream Diversion to Implement a Land Restoration Plan, Kopiliula Stream, Kaliae, Hana, Maui, TMK:1-2-001:003

PRESENTATION OF SUBMITTAL: Charley Ice

RECOMMENDATIONS:

That the Commission:

1. Find the applicant in violation of:
 - a. Hawaii Revised Statutes §174C-71 for not having a stream channel alteration permit;
 - b. Hawaii Revised Statutes §174C-93 for not having a stream diversion works permit; and
 - c. Hawaii Administrative Rules §169-44 for not amending the interim instream flow standard for Kopiliula Stream.
2. Assessment of a \$250 fine for each of the above violations in item #1 for a total of \$750 defer \$500 since:
 - a. The applicant immediately discontinued use of the diversion and cooperated with the Board of Land and Natural Resources in resolving the violations of the Conservation District Use Permit.
 - b. The diversion would help the applicant implement the Land Conservation Plan imposed on the applicant by the Board of Land and Natural Resources.
 - c. Payment of the \$250 is due no later than December 20, 2002

(The \$250 fine per violation is based on a first time violation following the Commission's Penalty Policy Guidelines.)
3. In the event that the applicant fails to make good faith efforts to resolve the Conservation District Violations with the Board of Land and Natural Resources or fail to pay the fine of \$250 in a timely manner, the Commission shall notify the applicant in writing and impose the deferred portion of the \$500 fine and require the immediate removal of the stream diversion from Kopiliula Stream.
4. Advise the applicant in writing that any future violations of the Commission's Rules or this Order may result in a fine of up to \$1000 per day per each recurring day of violation.

5. The applicant shall pay a permit processing fee of \$75.00 for this temporary stream diversion.
6. Approve an after-the-fact temporary stream channel alteration and stream diversion works permit and amend the interim instream flow standard for a diversion on Kopiliula Stream, Kaliae, Hana, Maui. This approval shall remain in effect until the Land Restoration Plan required by the Board of Land and Natural Resources is fully implemented and completed. The applicant shall remove the stream diversion system within thirty (30) days from the date the Commission receives written notification from the Land Division that the Land Restoration Plan is implemented and completed.

The permit and petition shall be subject to the standard conditions for after-the-fact stream channel alteration permits and stream diversion works permits in Exhibit 5, and standard conditions for after-the-fact interim instream flow amendments in Exhibit 6.

TESTIMONY BY APPLICANT:

Mr. Gene and Lajon Weaver both agreed on staff's recommendation and will proceed to clear this matter up.

MOTION: (RICHARDS/ANDERSON)

To approve the submittal.

UNANIMOUSLY APPROVED.

5. **Maui Meadows Homeowners Association, c/o James Williamson, Vice President, Petition to Designate Ground Water Management Areas Action, Iao & Waihee Aquifer Systems (60102 & 60103), Wailuku, Maui**

PRESENTATION OF SUBMITTAL: Roy Hardy

RECOMMENDATIONS:

That the Chairperson recommend to the Commission that the Commission:

1. Accept the November 14, 2002 Findings of Fact as final.
2. Find that meeting criteria §174C- 44(1) constitutes a current reasonable threat to the Iao Aquifer System (60102).
3. Designate the Iao Aquifer System (60102) as a ground water management area.
4. Find that meeting criteria §174C- 44(1) constitutes a current reasonable threat to the Waihee Aquifer System (60103).

5. Designate the Waihee Aquifer System (60103) as a ground water management area.

TESTIMONIES:

Ms. Sally Raisbeck of Wailuku testified in favor of designating both Iao and Waihee Aquifers. She stated that people have lost confidence in the Board of Water Supply's ability to better manage the water resources. There was a total lack of coordination and cooperation between the Planning Department and Council. She stated that the designation on Molokai has improved the ability of the people on Molokai to understand water issues. There is better data available, and the public has more input under the designation than when the Department of Water Supply had control.

Ms. Megan Wells, a Real Estate Agent, primarily sells lands for the intended purpose to create organic ag leases and to hopefully create jobs for Maui residents. After applying for permits, the County informed her that the wells drilled would be for residential purposes only. Ms. Wells checked with the State and they informed her that she should be able to obtain water for her purposes. She feels that the Iao and Waihee Aquifers would be better managed by the State.

Mr. John Varell, a landowner in Waihee, agrees with staff's recommendation because he believes the State would be better at managing the area.

Mr. William Meyer, formerly of U.S. Geological Survey, spoke in favor of designation of both aquifers. The three issues he talked about were 1) existing threats, 2) protection of the water source and 3) sustainable yield on the scientific uncertainties.

At 11:30 am Chair Coloma-Agaran entertained a motion to take a break till 12:30 pm and at 12:30 pm to 1:00 pm to move into Executive Session.

MOTION: (RICHARDS/NISHIDA)
UNANIMOUSLY APPROVED

The meeting was resumed at 1:02 pm.

Mr. Sean Lester urged the Commission to designate the Iao and Waihee Aquifers. He said the State should take over to prevent a water catastrophe.

Mr. Warren Watanabe of the Farm Bureau was not able to present oral testimony but filed a written testimony in opposition to designation.

Ms. Ellen Kraftsow of the Maui Department of Water Supply (MDWS) stated that the aquifer should be protected instead of designated. She stated that if staff provided guidelines or guidance the MDWS would follow guidelines if they were set. The County would need to reach some community agreement regarding availability policy for water resource use. The County could develop permit conditions that would require well

operators to submit pumpage and monitoring data to the County. The County could approve the well process, which would insure that the wells are properly constructed. The State could enhance enforcement on reporting and monitoring. None of the above actions require designation if good monitoring and management of the resource is implemented. In conclusion, Ms. Kraftsow stated that MDWS is concerned about the status of the aquifer. They are taking steps to address these concerns and proceeding as rapidly as can. MDWS does agree that better coordination between land use and water planning is needed.

Dr. Glenn Shepherd, a retired geologist, stated that the water levels are going down and the salinity is going up. He urged the Commission to designate the two aquifers. He also stated that more data is needed from the both aquifers.

Mr. Rob Parsons, Sierra Club Maui Group, is in favor of designation. He presented a petition with signatures in support of designation. He feels that the State together with the County can better manage the water resources. Designation would be the first responsible positive step towards responsible water planning.

Mr. Jonathan Starr, Member of the Maui Board of Water Supply, spoke on his own behalf. He stated that according the John Mink's report on the sustainable yield, Waihee and Iao are being overpumped. Mr. Starr is in favor of designation. He feels that water management is definitely needed. He was concerned about how MDWS reports water use to the Commission because reported pumpage changes with each report

Mr. Avery Chumbly, President of Wailuku Agribusiness, testified in opposition to designation. He felt that Ellen Kraftsow's statement on using water meters is more realistic than some of the planned use information. He stated that the problems Maui is encountering should be solved locally through the change in the Charter Amendment. He urged the Commission to defer action for 90 days to give the new Mayor and Council a chance to take a more formal position and return to the Commission on their intentions on what to do. He met with some representatives from A & B and John Mink met with David Craddick to talk about the possibility of a new well located in the Waikapu Aquifer System, south of Waikapu Valley that has a potential projected capacity of an additional 1.5 mgd. There are some significant alternatives that the County's Executive Branch, the County Council and the MDWS are looking into. The realignment of the MDWS under the Executive Branch will resolve into better planning.

Mr. Gary Zakian of Betsill Brothers Construction urged the Commission not to designate the Iao and Waihee Aquifers. He feels that designation will have devastating economic effects for Maui. He agreed with Mr. Chumbly to defer the decision for 90 days for the new administration to look at.

Ms. Kapua Sproat of Earthjustice representing Maui Meadows Homeowners Association summarized her testimony by stating first that they object to Commissioner Ching's participation on this item even though she was not present. With respect to designation, they urged the Commission to accept staff's recommendation to designate Iao and Waihee Aquifers as ground water management areas. She stated that designation is not only

necessary but mandated by law. Under the Hawaii State Constitution, this Commission has a public trust obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people. The Code requires the Commission to act when the resources of an area may be threatened. Staff's final findings of fact determined that the criteria for designation have been satisfied.

Mr. James Williamson, representing Maui Meadows Homeowners Association, stated that the aquifer systems are threatened and that designation is imperative. The statement about the pumpage pattern has improved is incorrect. The pumpage has increased and not reduced. The rise in the midpoint of the saltwater transition zone has not been reduced. It is increasing. Water level has not been stable over the last 3 years. There is a continued decline since 1998. He encouraged the Commission to act urgently before threat to the aquifers increases and cause irreversible damage. Designation is the only way to go. Maui Meadows concurs with all of the staff's recommendations.

Ms. Marcia Godinez a local resident had to leave but wanted to be on record that she supports staff's recommendations on designation.

Ms. Christina Hemming supports the staff's findings to protect and establish Iao Aquifer as a water management area. The Commission has fiduciary responsibilities to protect all people of Maui County and to protect the water resource that provides life for a large part of Maui County. She suggested to the Commission that all presently owned wells in the area be monitored.

Ms. Lucienne DeNaie of Maui Tomorrow first thanked the Commission for showing consideration for their needs on Maui. On behalf of Maui Tomorrow, they support designation of the Iao and Waihee Aquifers. The time has come for the County and State to step up to a new level of partnership. At the last Maui County Council meeting, the Public Works Committee stated that the Commission has the best expertise to decide on this matter of designation. The Committee felt that the Commission is fair and will do a good job and decide what is best for Maui.

Ms. Thelma Shimaoka, Office of Hawaiian Affairs (OHA), read testimony of Ernest Kimoto who is the Acting Hawaiian Rights Division Director in support of staff's submittal on designation of the Iao and Waihee Aquifers as ground water management areas. Based on scientific evidence in the submittal, OHA feels that the resources are in jeopardy and water usage is nearing the sustainable yield. OHA believes that designation is necessary to prevent further degradation of these vital water resources for the Island of Maui.

Mr. Ed Lindsey, a Maui resident, urged the Commission to take action and designate the Iao and Waihee Aquifers as a ground water management area.

Dr. Steve Gingrich, Hydrologist of the U.S. Geological Survey, stated that the biggest issue USGS is concerned about is the sustainable yield value. Currently it is set at 20 mgd. When withdrawals come close to the sustainable yield, close monitoring will need to be taken. For

the current infrastructure, possibly 16 to 17 mgd would be better; 20 mgd may be too high. Good management tools are needed.

In answer to Commissioner Anderson's question on chloride concentration being on the rise, Dr. Gingrich stated that because of the drought and variable pumping it would be complicated to project that for the future. It would be difficult getting the data because of the lack of rainfall and there is an increase in rainfall the pumpage decreases. There is too much uncertainty.

The numeric model would be a good management tool. Collecting hydrologic data in the wells and streams to see how much ground water is discharging in the streams and how much surface water is recharging the aquifer. For recharge, long term climate change and fog drip could be combined into a numeric model which is mathematical representation of the physics of how ground water works. The RAM model which is currently being used that comes up the sustainable yield, is a simplistic numeric model.

Chair Coloma-Agaran entertained a motion to enter into executive session to confer with counsel on this item.

MOTION: (RICHARDS/ANDERSON)
UNANIMOUSLY APPROVED

At 2:50 pm the Commission went into Executive Session to confer with legal counsel.

The meeting was resumed at 3:16 pm.

Chair Coloma-Agaran made a recommendation to the Commission that we accept November 14, 2002 Findings of Fact as final and that we find that meeting criteria §174C 44(1) constitutes a current reasonable threat to the Iao Aquifer System and that we designate the Iao Aquifer System as a Ground Water Management Area. Chair Coloma-Agaran also recommend that we find that meeting criteria §174C 44(1) constitutes a current reasonable threat to the Waihee Aquifer System and that we designate the Waihee Aquifer System as a Ground Water Management Area.

Chair Coloma-Agaran asked for a motion from the Commission.

1. Accept the November 14, 2002 Findings of Fact as final.
2. ~~Find that meeting criteria §174C 44(1) constitutes a current reasonable threat to the Iao Aquifer System (60102).~~
2. Designate the Iao Aquifer System (60102) as a ground water management area. The trigger for automatic designation be reduced to 90 percent of what the sustainable yield is, which for the Iao Aquifer is 18 mgd.

3. If the mid point in the transition zone from the Waiehu monitoring well in Iao Aquifer not rise above the 680-foot level at any time designation would be automatic.
4. ~~Find that meeting criteria §174C-44(1) constitutes a current reasonable threat to the Waihee Aquifer System (60103).~~
4. Designate the Waihee Aquifer System (60103) as a ground water management area. If the water level based on the 12-month moving average for the Kanoa Test Hole falls below the 6-foot elevation at any time, the Waihee Aquifer System would be automatically designated as a Ground Water Management Area.
5. Require the County administration to develop a numeric model for managing the Iao and Waihee systems and that a contract be developed and signed within 60 days from November 20, 2002. If the County does not produce a contract to develop this numeric model within the time frame that the Iao and Waihee Aquifers be designated as a Ground Water Management Area.

Commissioner Anderson moved that the Commission accept the final report as prepared by staff. However, Commissioner Anderson suggested a motion that would recognize the information presented as well as the recent developments as it relates to governance of the aquifer and in effect giving the County a chance to show that they are serious about managing this aquifer. Commissioner Anderson proposed that the trigger for automatic designation be reduced to 90 percent of what the sustainable yield is, which for the Iao Aquifer is 18 mgd. Further, Commissioner Anderson recommended that the Commission require the County administration to develop a numeric model for managing the Iao and Waihee systems and that a contract be developed and signed within 60 days of this meeting. If either the amended trigger is exceeded or the County does not produce a contract to develop this numeric model within the time frame that the Iao and Waihee Aquifers be designated as Ground Water Management Areas.

Commissioner Anderson explained his rationale. His concern is that he is not sure that the State is in any better position than the County to manage this system. One item that was not discussed is the difficulty in managing a relatively small area, the Waihee and Iao wells. It was pointed out by many testifiers that there are other water sources that may come to bear on resolving some of the issues around water management and candidly for the Commission to be focused exclusively on those two areas presents a very difficult management situation. Molokai and Oahu are designated as water management areas but the entire island is a management area. It is difficult for Commission staff and the Commission to manage the integrated system having only designated potentially a small portion of that system as a water management area. It presents other challenges administratively. One concern Commissioner Anderson had about designating at this time was that the other issue had to do with whether or not there was a sufficient problem to warrant such action. He appreciated all testimonies and in fact there is evidence of continued degradation of the Iao system as it relates to chloride concentrations. Actions could be taken by the County short of the Commission jumping in and assuming

management responsibilities. The key is whether the County is willing and able to effectively manage this water system. If the County does not put together the numeric modeling, Commissioner Anderson stated that the changes they are proposing will not be effective.

Commissioner Anderson clarified Commissioner Dela Cruz's question on triggering. He stated that the other trigger that was mentioned in the staff recommendation was a trigger that would relate to the depth of the transition zone or the midpoint of the transition zone for the Waihee System.

Commissioner Anderson further recommended in his motion a third trigger for Iao Aquifer. That is that the midpoint in the transition zone from the monitoring well not rise above the 680-foot level at any time and if this happens, designation would be automatic.

Commissioner Anderson further stated that for the Waihee System similar conditions be imposed. If the water level based on the 12-month moving average for the Kanoa Test Hole falls below the 6-foot elevation at any time, the Waihee Aquifer System would be automatically designated as a Ground Water Management Area.

MOTION: (ANDERSON/RICHARDS)
To approve the submittal as amended.
UNANIMOUSLY APPROVED AS AMENDED.

This meeting was adjourned at 3:27 pm.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director